

110TH CONGRESS  
1ST SESSION

# H. R. 851

To modify the law with respect to the death penalty, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2007

Mr. GOHMERT (for himself, Mr. SMITH of Texas, and Mr. FRANKS of Arizona)  
introduced the following bill; which was referred to the Committee on the  
Judiciary

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## A BILL

To modify the law with respect to the death penalty, and  
for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Death Penalty Reform  
5       Act of 2007”.

6       **SEC. 2. AMENDMENTS RELATING TO TITLE 28.**

7       Chapter 153 of title 28, United States Code, is  
8       amended—

1 (1) in section 2254(h) by striking “section 408  
2 of the Controlled Substances Act” and inserting  
3 “section 3599 of title 18”; and

4 (2) in section 2255 by striking “section 408 of  
5 the Controlled Substances Act” and inserting “sec-  
6 tion 3599 of title 18”.

7 **SEC. 3. AMENDMENTS RELATING TO SECTION 3592 OF**  
8 **TITLE 18.**

9 Section 3592 of title 18, United States Code, is  
10 amended—

11 (1) in subsection (a), by inserting “for which  
12 notice has been provided” after “factor”;

13 (2) in subsection (c)(1)—

14 (A) by inserting “section 241 (conspiracy  
15 against rights), section 245 (federally protected  
16 activities), section 247 (interference with reli-  
17 gious exercise)” after “section 37 (violence at  
18 international airports),”; and

19 (B) by inserting “section 1512 (tampering  
20 with a witness, victim, or an informant), section  
21 1513 (retaliating against a witness, victim, or  
22 an informant),” after “section 1203 (hostage  
23 taking),”;

24 (3) in subsection (c)(2)—

1 (A) by striking “For any offense, other  
 2 than an offense for which a sentence of death  
 3 is sought on the basis of section 924(c), the”  
 4 and inserting “The”; and

5 (B) by striking “previously” and inserting  
 6 “, in a prior adjudication,”;

7 (4) in subsection (c)(8)—

8 (A) by striking “or”; and

9 (B) by inserting “or in order to retain ille-  
 10 gal possession” before “of anything”;

11 (5) in subsection (c)(12), by striking “had pre-  
 12 viously” each place that term appears and inserting  
 13 “has previously”; and

14 (6) in subsection (c), by inserting after para-  
 15 graph (16) the following:

16 “(17) OBSTRUCTION OF JUSTICE.—The defend-  
 17 ant engaged in any conduct resulting in the death of  
 18 another person in order to obstruct the investigation  
 19 or prosecution of any offense.”.

20 **SEC. 4. AMENDMENTS RELATING TO SECTION 3593 OF**  
 21 **TITLE 18.**

22 Section 3593 of title 18, United States Code, is  
 23 amended—

24 (1) in subsection (a)—

1 (A) by striking “, a reasonable time before  
2 the trial or before acceptance by the court of a  
3 plea of guilty,”;

4 (B) by inserting after paragraph (2) the  
5 following:

6 “The notice must be filed a reasonable time before trial  
7 or before acceptance by the court of a plea of guilty. The  
8 court shall, where necessary to ensure adequate prepara-  
9 tion time for the defense, grant a reasonable continuance  
10 of the trial. If the government has not filed a notice of  
11 intent to seek the death penalty or informed the court that  
12 a notice of intent to seek the death penalty will not be  
13 filed, the court shall not accept a plea of guilty to an of-  
14 fense described in section 3591 without the concurrence  
15 of the government.”; and

16 (C) by inserting before the last sentence  
17 the following: “The government may also pro-  
18 vide notice under this subsection of any factor  
19 concerning the state of mind, intent or other  
20 culpability of the defendant in committing the  
21 offense.”;

22 (2) in subsection (b), by inserting at the end of  
23 paragraph (3) the following:

24 “The court shall not dismiss alternate jurors impaneled  
25 during the guilt phase unless for good cause as to indi-

1 vidual alternates or upon a finding, under this subsection,  
2 that the sentencing hearing will be heard by the court  
3 alone. The court shall retain such alternate jurors to hear  
4 the sentencing trial until the completion of the hearing.  
5 If at any time, whether before or after the final submission  
6 of the sentencing case to the jury, a sitting juror dies or  
7 becomes ill, or upon other good cause shown to the court  
8 is found to be unable to perform his or her duty in a timely  
9 manner, or if a juror requests a discharge and good cause  
10 appears therefor, the court shall order the juror to be dis-  
11 charged and draw the name of an alternate, who shall then  
12 take a place in the jury box, and be subject to the same  
13 rules and regulations as though the alternate juror had  
14 been selected as one of the original jurors. If deliberations  
15 have begun when the substitution is made, the court shall  
16 instruct the newly constituted jury to recommence delib-  
17 erations as if none had previously taken place. The panel,  
18 in all other respects, shall be considered unaltered by the  
19 substitution of a duly seated alternate.”;

20 (3) in subsection (c)—

21 (A) in the fourth sentence, by inserting  
22 “for which notice has been provided under sub-  
23 section (b)” before the period;

1 (B) in the fifth sentence, by inserting “,  
2 including information pertaining to  
3 unadjudicated conduct” before the period;

4 (C) by inserting after the eighth sentence  
5 the following: “The government shall be per-  
6 mitted to cross-examine the defendant regard-  
7 ing any statements or testimony by the defend-  
8 ant to the sentencing jury.”;

9 (D) by inserting after the fourth sentence  
10 the following: “If the defendant has raised the  
11 issue of mental retardation as required under  
12 subsection (b), the defendant may introduce in-  
13 formation relevant to mental retardation.”; and

14 (E) by inserting at the end the following:  
15 “The defendant shall have the burden of prov-  
16 ing mental retardation by the preponderance of  
17 the information.”;

18 (4) in subsection (d)—

19 (A) in the second sentence by inserting  
20 “determine the truth of the allegations in the  
21 notice filed under subsection (a) of this section  
22 regarding any mental state set forth in section  
23 3591(a), and” after “It shall”;

24 (B) by inserting after the second sentence  
25 the following: “In any case in which the defend-

1 ant has raised the issue of mental retardation  
2 as required under subsection (b), the jury, or if  
3 there is no jury, the court, shall determine the  
4 issue of mental retardation only if any aggra-  
5 vating factor set forth in section 3592 is found  
6 to exist. Such determination shall occur prior to  
7 the consideration of any mitigating factor.”;  
8 and

9 (C) by inserting at the end the following:

10 “If the jury, or if there is no jury, the court,  
11 determines that the defendant is mentally re-  
12 tarded, the court shall sentence the defendant  
13 to life imprisonment without the possibility of  
14 release, or some other lesser sentence author-  
15 ized by law.”;

16 (5) in subsection (e)—

17 (A) by inserting before the last sentence  
18 the following: “In assessing the appropriateness  
19 of a sentence of death, the jury, or if there is  
20 no jury, the court must base the decision on the  
21 facts of the offense and the aggravating and  
22 mitigating factors and avoid any influence of  
23 sympathy, sentiment, passion, prejudice, or  
24 other arbitrary factor when imposing sen-  
25 tence.”; and

1 (B) by striking “, to life imprisonment”  
2 and all that follows through “lesser sentence”  
3 and inserting “or to life imprisonment without  
4 possibility of release”.

5 (6) by redesignating subsections (b) through (f)  
6 as subsections (c) through (g); and

7 (7) by adding after subsection (a) the following:  
8 “(b) NOTICE BY THE DEFENDANT.—

9 “(1) If, as required under subsection (a), the  
10 government has filed notice seeking a sentence of  
11 death, the defendant shall, a reasonable time before  
12 the trial, sign and file with the court, and serve on  
13 the attorney for the government, notice setting forth  
14 the mitigating factor or factors that the defendant  
15 proposes to prove mitigate against imposition of a  
16 sentence of death. In any case in which the defend-  
17 ant intends to raise the issue of mental retardation  
18 as precluding a sentence of death, the defendant  
19 shall, a reasonable time before trial, sign and file  
20 with the court, and serve on the attorney for the  
21 government, notice of such intent.

22 “(2) When a defendant makes a claim of men-  
23 tal retardation or intends to rely on evidence of men-  
24 tal impairment, or other mental defect or disease as  
25 a mitigating factor under this section, the govern-



1       ment shall have the right to an independent mental  
2       health examination of the defendant. A mental  
3       health examination ordered under this subsection  
4       shall be conducted by a licensed or certified psychia-  
5       trist, psychologist, neurologist, psychopharmacolo-  
6       gist, or other allied mental health professional. If the  
7       court finds it appropriate, more than one such pro-  
8       fessional shall perform the examination. To facilitate  
9       the examination, the court may commit the person  
10      to be examined for a reasonable period, but not to  
11      exceed 30 days, to the custody of the Attorney Gen-  
12      eral for placement in a suitable facility. Unless im-  
13      practicable, the psychiatric or psychological examina-  
14      tion shall be conducted in a suitable facility reason-  
15      ably close to the court. The director of the facility  
16      may apply for a reasonable extension, but not to ex-  
17      ceed 15 days upon a showing of good cause that the  
18      additional time is necessary to observe and evaluate  
19      the defendant.

20           “(3) Following the filing of a defendant’s notice  
21      under this subsection, the court shall, where nec-  
22      essary to ensure adequate preparation time for the  
23      government, grant a reasonable continuance of the  
24      trial.

1           “(4) For purposes of this section, a defendant  
 2           is mentally retarded if, since some point in time  
 3           prior to age 18, he or she has continuously had an  
 4           intelligence quotient of 70 or lower and, as a result  
 5           of that significantly subaverage mental functioning,  
 6           has since that point in time continuously had a di-  
 7           minished capacity to understand and process infor-  
 8           mation, abstract from mistakes and learn from expe-  
 9           rience, engage in logical reasoning, control impulses,  
 10          and understand others’ reactions.”.

11 **SEC. 5. AMENDMENTS RELATING TO SECTION 3594 OF**  
 12 **TITLE 18.**

13          Section 3594 of title 18, United States Code, is  
 14          amended—

15               (1) in the first sentence—

16                       (A) by striking “3593(e)” and inserting  
 17                       “3593(f)”; and

18                       (B) by striking “or life imprisonment with-  
 19                       out possibility of release”;

20               (2) in the second sentence—

21                       (A) by striking “any lesser sentence that is  
 22                       authorized by law” and inserting “life imprison-  
 23                       ment without the possibility of release”; and

24                       (B) by inserting “as limited by section  
 25                       3593(f)” before the period.

1   **SEC. 6. AMENDMENTS RELATING TO SECTIONS 3595, 3596,**  
2                   **AND 3597 OF TITLE 18.**

3           (a) SECTION 3596.—Section 3596 of title 18, United  
4 States Code, is amended—

5                   (1) in subsection (a), by striking “When the  
6 sentence is to be implemented” and all that follows  
7 through “such law” and inserting the following: “A  
8 sentence of death for any offense against the United  
9 States shall be implemented pursuant to regulations  
10 promulgated by the Attorney General”; and

11                   (2) in subsection (c)—

12                           (A) by striking the first sentence; and

13                           (B) by adding at the end the following:  
14                   “The government shall not be limited in its op-  
15 portunities to seek rehearing, based on changed  
16 circumstances, of a finding of mental incapacity  
17 under this subsection.”.

18           (b) SECTION 3595.—Section 3595 of title 18, United  
19 States Code, is amended by striking “3593(d)” and insert-  
20 ing “3593(e)”.

21           (c) SECTION 3597.—Section 3597 of title 18, United  
22 States Code, is amended—

23                   (1) in the heading, by striking “**State**”;

24                   (2) in subsection (a), by striking “A United  
25 States marshal” and all that follows through “Attor-  
26 ney General” and inserting the following: “An offi-

6           “(c) CONFIDENTIALITY.—Notwithstanding any other  
7 law, the identity of any employee of the United States De-  
8 partment of Justice, the Federal Bureau of Prisons, the  
9 United States Marshals Service, or any State department  
10 of corrections, or of any person providing services relating  
11 to an execution under contract or victim or victim’s sur-  
12 vivor, who participates in or witnesses the administration  
13 of an execution pursuant to this section shall not be pub-  
14 licly disclosed, absent the consent of any such individual.”.

“3597. Use of facilities.”.

21 (a) IN GENERAL.—Section 3005 of title 18, United  
22 States Code, is amended to read as follows:

24       “(a) In any case in which the Government files a no-  
25   tice of intent to seek a sentence of death, the court shall

1 promptly, upon the defendant's request, assign a second  
2 counsel for the defendant in addition to any previously as-  
3 signed counsel. At least one assigned counsel shall be  
4 learned in the law applicable to capital cases. Both counsel  
5 shall have free access to the accused at all reasonable  
6 hours. In assigning counsel under this section, the court  
7 shall consider the recommendation of the Federal Public  
8 Defender organization, or, if no such organization exists  
9 in the district, of the Administrative Office of the United  
10 States Courts.

11       “(b) In any case in which the government files a no-  
12 tice of intent to seek the death penalty, the court shall,  
13 at the outset of any trial, permit voir dire of the venire  
14 concerning personal scruples with regard to the death pen-  
15 alty. The trial court shall allow strikes for cause as to any  
16 member of the venire whose personal views would prevent  
17 or substantially impair the performance of a juror's sworn  
18 duties under the court's instructions in a death penalty  
19 case.”.

20       (b) CONFORMING AMENDMENT.—The table of sec-  
21 tions at the beginning of chapter 201 of title 18, United  
22 States Code is amended by striking the item relating to  
23 section 3005 and inserting the following:

“3005. Counsel and voir dire in capital cases.”.

1 **SEC. 8. ADDITIONAL PROCEDURAL MODIFICATIONS.**

2 (a) MODIFICATION OF MITIGATING FACTORS.—Sec-  
3 tion 3592(a)(4) of title 18, United States Code, is amend-  
4 ed—

5 (1) by striking “Another” and inserting “The  
6 Government could have, but has not, sought the  
7 death penalty against another”; and

8 (2) by striking “, will not be punished by  
9 death”.

10 (b) MODIFICATION OF AGGRAVATING FACTORS FOR  
11 OFFENSES RESULTING IN DEATH.—Section 3592(c) of  
12 title 18, United States Code, is amended in paragraph (1),  
13 by inserting “section 2339D (terrorist offenses resulting  
14 in death),” after “destruction),”.

15 (c) JURIES OF LESS THAN 12 MEMBERS.—Sub-  
16 section (c), as redesignated by section 4(6) of this Act,  
17 of section 3593 of title 18, United States Code, is amend-  
18 ed by striking “unless” and all that follows through the  
19 end of the subsection and inserting “unless the court finds  
20 good cause, or the parties stipulate, with the approval of  
21 the court, a lesser number.”.

22 (d) PEREMPTORY CHALLENGES.—Rule 24(c) of the  
23 Federal Rules of Criminal Procedure is amended—

24 (1) in paragraph (1), by striking “6” and in-  
25 serting “9”; and

1           (2) in paragraph (4), by adding at the end the  
2 following:

3           “(D) SEVEN, EIGHT OR NINE ALTER-  
4 NATES.—Four additional peremptory challenges  
5 are permitted when seven, eight, or nine alter-  
6 nates are impaneled.”.

○